WONG YUE v. LIM TENG KOOI

[A. C. J. (Good J.) July 2, 1957]

[Ipoh — Civil Appeal No. 3 of 1957]

Landlord and Tenant — Receipt in respect of sub-letting of rents in excess of maximum rent — Material date — Control of Rent Ordinance, 1956, s. 12(1)(j).

In this case the landlord applied for possession of premises under section 12(1)(j) of the Control of Rent Ordinance, 1956 on the ground that the tenant having sublet part of the premises has received in respect of such subletting rents in excess of the permitted rent for that part. The tenant received the rent on July 10, 1956 in excess for the period June 10 to 10th July 1956. The Control of Rent Ordinance, 1956 came in force on the 1st July 1956.

Held: (1) the law applicable to the present case is the Control of Rent Ordinance, 1956, which was in force at the time the action was commenced;

(2) as the landlord has established that the tenant received the excessive rent after July 1, 1956 and before the commencement of proceedings he is entitled to possession, notwithstanding the fact that part of the rent received was in respect of a period prior to the commencement of the Ordinance.

Cases referred to:—

(1) *Yong Hon Chong v. Harbans Singh* (1949) M.L.J. 99.

(2) *Woon Guat Chin v. Lim Sian Poon* (1954) M.L.J. 184, 185.

(3) *Hooi Moon v. Ar. K. Suppiah Chettiar* (1954) M.L.J. 186, 187.

CIVIL APPEAL.

K. C. Chan Jr. for the appellant.

H. T. Ong for the respondent.

K. C. Chan Jr.: Grounds 1 and 5 — The Control of Rent Ordinance 1956 came into force on July 1, 1956. The appellant paid rent to the respondent on July 10, 1956 but that was in respect of the period June 10 to July 9, 1956, rent being payable in arrear. Therefore the 1956 Ordinance does not apply to this tenancy. Section 12(1)(j) of the 1956 Ordinance refers to monthly tenancy, so the tenant could not have received the rent to which this paragraph applies. The purpose of the Control of Rent Ordinance is the protection of one section of the public from the other. Odgers' Construction of Deeds & Statutes, 3rd Edn. p. 318. Croxford v. Universal Insurance Co. (1936) 2 K.B. 253.

A statute must be construed in favour of the class of persons for whose protection it was passed. Woon Guat Chin v. Lim Sian Poon (1954) M.L.J. 184. In the present case, rent was not "due". The notice to quit was given on August 11, 1956. Before the notice was issued the appellant had not been receiving rent.

Ground 2 — The respondent purchased the property and became landlord on August 1, 1956. The alleged breach took place before the respondent became the owner and landlord. His predecessor in title never took any legal action against the appellant. Can respondent exercise a right which accrued to his predecessor in title? Woodfall, p. 834.

Ground 3 — There is no evidence to show that the respondent acquired the cause of action accruing to his predecessor. Ground 4 — Meenachi Sundram's case (1955) M.L.J. 128 has no application. Ground 6 — Refer Hooi Moon v. Suppiah Chettiar (1954) M.L.J. 186. The tenancy was terminated on October 10, 1956. But the appellant had not been receiving rent for 3 months before that. The tenant should be given the protection of a statutory tenant.

H. T. Ong: Yong Hon Chong v. Harbans Singh (1949) M.L.J. 99, C.A. is binding on the Court. The law applicable is the law in force at the time the action is commenced. The defendant for a number of years paid $50 rent to the owners and collected $92.50 from his subtenants. She was in breach of the Control of Rent Ordinance, 1948, s. 13(1)(j) until that was replaced by the 1956 Ordinance. Whichever way the Court looks at the appellant's action she was in breach of a statutory provision. When she received $92.50 on July 10, 1956 she was clearly in breach of the 1956 Ordinance. It is a fallacy to talk about the respondent acquiring or not acquiring a cause of action. The Ordinance does not give to the landlords a cause of action that did not exist before. What it does is to fetter the common law right of landlords so long as the tenants themselves are not at fault. Once the fetter has been removed by the fault of the tenant then the tenant ceases to have the protection of the Ordinance. The fetter never existed during respondent's time as landlord. Up to the termination of the contractual tenancy there was a contract by the sub-tenant to pay $92.50 per month to the tenant. This contract existed at all times up to October 10, 1956. The contract was rescinded or modified by consensual agreement. Would the appellant have been able to distrain on the goods and chattels of the respondent for $92.50? Yes. Wagner's case (1947) M.L.J. 33; Sarah Cashin's case (1955) M.L.J. 52; and Chung Lai Heng's case (1952) M.L.J. 232. The Contract to pay is equivalent to receiving.

Chan in reply: From August 10, 1956 the appellant was refusing to accept $92.50 rent. Therefore the contract to pay that amount was rescinded.

Ong: Tenant must put himself in the right to claim the protection of the section. The test must be the conduct of the tenant.

Chan: The appellant is free to make new arrangements with the respondent, especially when the respondent has become the new landlord. There is evidence of negotiation.

Cur. Adv. Vult.

Good J. : — I am bound by the decision of the Federation Court of Appeal in the case of *Yong Hon Chong v. Harbans Singh*[1] and, in view of that decision, I rule that the law applicable to the present case is the Control of Rent Ordinance, 1956. Section 12(1)(j) of the Ordinance was in force before the proceedings in the present case were commenced, and the provisions of paragraph (j) removed what has been called the fetter on the landlord's right to possession if he establishes that the tenant having sub-let the premises or part thereof has received in respect of such sub-letting rents (exclusive of any payment for services provided by any local authority) for any sub-let part of the premises in excess of the maximum permitted

rent for that part or rents which including the apportioned rental or value of any part of the premises retained by the tenant or not sub-let by him exceed in the aggregate by more than ten per centum the rent of the whole premises.

The only point that remains for decision is the material date in relation to the receiving by the tenant of what I may for the sake of brevity call "excessive rent". I propose to follow the opinion of the learned Chief Justice of the Federation expressed in the case of *Woon Guat Chin (f) v. Lim Sian Poon*[2] where Thomson J. as he then was, said :—

> "Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 per cent of the rent paid by him to the landlord."

It is true that Spenser Wilkinson J. in the case of *Hooi Moon v. Ar. K. Suppiah Chettiar*[3] said :—

> ". . . if at the date when the contractual tenancy terminates the tenant is receiving rent in excess of seventy-five per cent of the main rent the conditions of paragraph (j) to section 13(1) are fulfilled, and the landlord is entitled to possession."

I do not, however, consider that this is a different statement of the law from that contained in the judgment of Thomson J. It seems to me that since Spenser Wilkinson J. referred to Thomson J.'s. judgment in his own judgment and did not differ from it he was only deciding so much as he had to decide for the purposes of the particular case before him, and that Thomson J. in effect decided the same thing as Spenser Wilkinson J. and something further which was necessary for the purpose of the case before him. It therefore seems to me quite clear that if the landlord establishes that the tenant received excessive rent at any time after the 1st July, 1956, when the Ordinance came into force, and before the commencement of proceedings he is entitled to possession whether or not he was the landlord at the time when the excessive rent was accepted. The rent of $92.50 was undoubtedly excessive rent in the sense in which I have used the term, as the rent to which he was entitled was only $50, and I cannot accept the argument of counsel for the appellant that because this rent was paid in arrear in respect of the period 10th June to 10th July, 1956, that section 12(1)(j) is not applicable. The tenant manifestly did the very act which is contemplated by section 12(1)(j) at a time when the section was in force and he cannot escape the consequences of that act by saying that it was done in respect of a period prior to the commencement of the Ordinance. For these reasons I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *K. C. Chan; Cheang Lee & Ong.*

EMPLOYEES PROVIDENT FUND BOARD, F.M. v. GOH TIONG TAN

[O. C. J. (Hepworth J.) July 5, 1957]

[Malacca — Originating Summons No. 61 of 1956]

Practice — Rules of the Supreme Court, 1934, O. 26 r. 5, O. 51 rr. 13 & 14, and O. 52 — Originating Summons — Whether application can be made by originating summons — English R.S.C., O. 54A r. 1A.

In this case the plaintiffs took out an Originating Summons applying for the determination of the following questions: "Whether or not the lighter workers (Taikongs and boatmen referred to in the plaintiffs' affidavit) are 'employees' as defined in section 2 of the Employees Provident Fund Ordinance, 1951." The preliminary question was raised as to whether the proceedings were correctly brought by Originating Summons.

Held: as there is nothing in O. 52 of the Rules of the Supreme Court which provides for the issue of an Originating Summons in the circumstances of this case and as there is no statutory provision applicable, there is no jurisdiction at all in this case and therefore no order could be made on the summons.

Cases referred to :—

(1) *Short v. Henderson* (1946) 115 L.J. (P.C.) 41; 62 T.L.T. 427; 174 L.T. 417.

(2) *S. Rm. Raman Chettiar v. Soh Bek Neo* (1952) M.L.J. 170.

ORIGINATING SUMMONS.

L. A. Massie (Federal Counsel) for the plaintiffs.

M. B. Brash for the defendant.

Hepworth J. : — This was an Originating Summons taken out by Federal Counsel on behalf of the Employees Provident Fund Board, plaintiffs, against one Goh Tiong Tan, defendant, applying for the determination of the following question :—

> "Whether or not the lighter workers (Taikongs and boatmen referred to in the Plaintiffs' Affidavit) are 'employees' as defined in section 2 of the Employees Provident Fund Ordinance, 1951."

Before the Summons was fixed for hearing I indicated that in the first instance I wished to be satisfied that the procedure adopted in this case was correct and that the plaintiffs were entitled to ask for a declaration determining the question stated above. The hearing on the 29th May, 1957, therefore was only for the purpose of deciding whether the proceedings and what they purported to achieve were in order.

Mr. Brash on behalf of the defendant argued that the proceedings were not in order because the only matters which could be brought before the Court by Originating Summons, apart from specific statutory provision, were those matters which were provided for in O. 52 and if a particular matter was not provided for in O. 52 then an Originating Summons was not the